

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT JACKSON

Assigned on Briefs May 5, 2009

**JOSEPH R. WIGGINS v. STATE OF TENNESSEE**

**Direct Appeal from the Circuit Court for Lake County**  
**No. 08-CR-9205      R. Lee Moore, Jr., Judge**

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**No. W2008-02630-CCA-R3-HC - Filed December 7, 2009**

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The Petitioner, Joseph R. Wiggins, was convicted by a Davidson County Criminal Court jury of two counts of armed robbery and two counts of aggravated kidnapping and received an effective sentence of sixty years in the Tennessee Department of Correction. He filed a *pro se* petition for writ of habeas corpus relief in the Lake County Circuit Court which was dismissed. On appeal, the Petitioner argues that his indictment was defective and violated his due process rights because each count of the indictment failed to specify the relevant code section which would have informed him of the elements, the Class, and the punishment for each offense. Upon review, we affirm the judgment summarily dismissing the petition for writ of habeas corpus.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed**

CAMILLE R. McMULLEN, J., delivered the opinion of the court, in which THOMAS T. WOODALL, and J.C. McLIN, JJ., joined.

Joseph R. Wiggins, Tiptonville, Tennessee, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; and Cameron L. Hyder, Assistant Attorney General, for the Appellee, State of Tennessee.

**OPINION**

**Background.** Prior to filing the petition for writ of habeas corpus, the Petitioner filed a petition for post-conviction relief in the Davidson County Criminal Court alleging ineffective assistance of trial counsel, which was dismissed. This court affirmed the dismissal of post-conviction relief on November 15, 1985. *See Joseph Ricky Wiggins v. State*, 1985 WL 3664 (Tenn. Crim. App., at Nashville, Nov. 15, 1985), *perm. to appeal denied* (Tenn. Mar. 3, 1986). On October 13, 2008, the Petitioner filed a petition for writ of habeas corpus in the Lake County Circuit Court claiming that his indictment was defective and violated his due process rights because each count of the indictment failed to specify the relevant code section for the offense. The petition for writ of habeas corpus was dismissed by written order on November 7, 2008. The court denied habeas corpus relief on the basis that the portion of the indictment presented to the court “state[d] the facts constituting the offenses with which he [was] being charged in a manner so as to enable a person of

common understanding to know what [was] intended and with that degree of certainty which [would] enable the Court on conviction to pronounce the proper judgment.” The Petitioner filed a timely notice of appeal.

## ANALYSIS

The Petitioner argues that the indictment is defective because each count of the indictment failed to specify the relevant code section which would have informed him of the elements, the Class, and the punishment for each offense. In response, the State contends that the indictment met all the statutory requirements and placed the Petitioner on notice as to the charged offenses. We agree with the State.

In determining whether to grant habeas corpus relief, our review is de novo without a presumption of correctness given to the lower court’s findings. Summers v. State, 212 S.W.3d 251, 255 (Tenn. 2007) (citing State v. Livingston, 197 S.W.3d 710, 712 (Tenn. 2006)). A prisoner is guaranteed the right to habeas corpus relief under Article I, section 15 of the Tennessee Constitution. See also T.C.A. §§ 29-21-101 to 29-21-130. The grounds upon which a writ of habeas corpus may be issued, however, are very narrow. Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999). “Habeas corpus relief is available in Tennessee only when ‘it appears upon the face of the judgment or the record of the proceedings upon which the judgment is rendered’ that a convicting court was without jurisdiction or authority to sentence a defendant, or that a defendant’s sentence of imprisonment or other restraint has expired.” Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993). “[T]he purpose of a habeas corpus petition is to contest void and not merely voidable judgments.” Potts v. State, 833 S.W.2d 60, 62 (Tenn. 1992) (citing State ex rel. Newsom v. Henderson, 424 S.W.2d 186, 189 (Tenn. 1968)). “A void judgment is one in which the judgment is facially invalid because the court lacked jurisdiction or authority to render the judgment or because the defendant’s sentence has expired.” Taylor, 995 S.W.2d at 83 (citing Dykes v. Compton, 978 S.W.2d 528, 529 (Tenn. 1998); Archer, 851 S.W.2d at 161-64). However, “a voidable judgment ‘is facially valid and requires the introduction of proof beyond the face of the record or judgment to establish its invalidity.’” Hickman v. State, 153 S.W.3d 16, 24 (Tenn. 2004) (citing State v. Ritchie, 20 S.W.3d 624, 630-31 (Tenn. 2000)); see also Summers, 212 S.W.3d at 256 (Tenn. 2007) (citing Dykes, 978 S.W.2d at 529). Thus, “[i]n all cases where a petitioner must introduce proof beyond the record to establish the invalidity of his conviction, then that conviction by definition is merely voidable, and a Tennessee court cannot issue the writ of habeas corpus under such circumstances.” Ritchie, 20 S.W.3d at 633 (Tenn. 2000). Moreover, it is the petitioner’s burden to demonstrate, by a preponderance of the evidence, that the judgment is void or that the confinement is illegal. Wyatt v. State, 24 S.W.3d 319, 322 (Tenn. 2000).

If the habeas corpus court determines from the petitioner’s filings that no cognizable claim has been stated and that the petitioner is not entitled to relief, the petition for writ of habeas corpus may be summarily dismissed. See Hickman, 153 S.W.3d at 20. Further, the habeas corpus court may summarily dismiss the petition without the appointment of a lawyer and without an evidentiary hearing if there is nothing on the face of the judgment to indicate that the convictions are void. Passarella v. State, 891 S.W.2d 619, 627 (Tenn. Crim. App. 1994), perm. to appeal denied (Tenn.

Nov. 28, 1994), superseded by statute as stated in State v. Steven S. Newman, No. 02C01-9707-CC-00266, 1998 WL 104492, at \*1 n.2 (Tenn. Crim. App., at Jackson, Mar. 11, 1998).

The Tennessee Supreme Court has held that “the validity of an indictment . . . may be addressed in a petition for habeas corpus when the indictment is so defective as to deprive the court of jurisdiction.” Dykes, 978 S.W.2d at 529. In Danny R. King v. State, a panel of this court concluded that if the offenses in the indictment occurred prior to the November 1, 1989 enactment of the new criminal code, then the requirements for sufficiency of the indictment as stated in State v. Hill, 954 S.W.2d 725, 727 (Tenn. 1997) were not controlling.<sup>1</sup> Danny R. King v. State, No. 01C01-9710-CR-00487, 1998 WL 712345, at \*2 (Tenn. Crim. App., at Nashville, Oct. 13, 1998), perm. to appeal denied, concurring in results only (Tenn. Mar. 1, 1999). Instead, for pre-1989 offenses, the panel stated that “the court must review the indictment to determine whether the challenged indictment tracks the language of the statutory offense charged.” Id. It added, “[e]ven if the language of the statute is not strictly pursued, the indictment remains sufficient if words of equivalent import or more comprehensive import are used.” Id. (citing Campbell v. State, 491 S.W.2d 359, 361 (Tenn. 1973)). The panel also explained that it is unnecessary for the indictment to specify the particular code section for the offense:

[R]eference to the particular code section is not required; the statute portion referred to is mere surplusage. Cole v. State, 512 S.W.2d 598[, 601-02] (Tenn. Crim. App. [1974]), cert. denied, (Tenn. [July 29,] 1974) (finding mistaken subsection of statute as mere surplusage); McCracken v. State, 489 S.W.2d 48, 51 (Tenn. Crim. App. 1972), cert. denied, (Tenn. [Dec. 4,] 1972) (finding reference to incorrect statute as surplusage); Harris v. State, 82 Tenn. 485 (1884) (holding where indictment charges an offense in language of statute, other and additional averments not required by statute should be disregarded as surplusage).

Id. at \*4. We note that pursuant to Tennessee Code Annotated section § 40-1802 (1975), which was in effect at the time of the offenses in this case, “[t]he indictment must state the facts constituting the offense in ordinary and concise language, without prolixity or repetition, in such a manner so as to enable a person of common understanding to know what is intended, and with that degree of certainty which will enable the court, on conviction, to pronounce the proper judgment . . .” T.C.A. § 40-1802 (1975); see also T.C.A. § 40-13-202 (2006).

At the time of the Petitioner’s offenses, the Tennessee Code Annotated section regarding armed robbery stated:

**39-3901. Robbery committed with a deadly weapon a Class X felony. –**

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<sup>1</sup>The King court stated that “[a]lthough Hill is not controlling authority for pre-1989 offenses, its principles are applicable.” See Danny R. King v. State, 1998 WL 712345, at \*2. Under Hill, an indictment for offenses occurring after November 1, 1989 is valid if it contains sufficient information “(1) to enable the accused to know the accusation to which answer is required, (2) to furnish the court adequate basis for the entry of a proper judgment, and (3) to protect the accused from double jeopardy.” 954 S.W.2d at 727.

(a) Robbery is the felonious and forcible taking from the person of another, goods or money of any value, by violence or putting the person in fear. Every person convicted of the crime of robbery shall be imprisoned in the penitentiary not less than five (5) nor more than fifteen (15) years; provided, that if the robbery be accomplished by the use of a deadly weapon the punishment shall be death by electrocution, or the jury may commute the punishment to imprisonment for life or for any period of time not less than ten (10) years.

Provided further, that if the robbery be accomplished by the use of a deadly weapon and the robbery be of a business establishment which sells controlled substances classified in Schedules I-VI pursuant to chapter 14 of title 52, the punishment shall be imprisonment for life or for any time not less than ten (10) years and no person convicted of such offense shall be eligible for release classification, or parole, until such time as he has served ten (10) full calendar years of such sentence. Such offense is a Class X felony.

T.C.A. § 39-3901(a) (Supp. 1981).

At the time of the Petitioner's offense, the Tennessee Code Annotated section regarding aggravated kidnapping stated:

**39-2603. Aggravated kidnapping – Penalty – Class X felony –**

(a) Any person who unlawfully seizes, confines, inveigles, entices, decoys, abducts, conceals, kidnaps or carries away another with the felonious intent to:

....

(2) Detain the other against his will;

....

shall be guilty of aggravated kidnapping when one or more of the following circumstances are present:

....

(C) The person secretly confined, unlawfully detained or sent out of the state is the victim of any felony committed on his person during the secret confinement, unlawful detention or carrying out of the state; or

(D) The secret confinement, unlawful detection or carrying out of the state is accomplished while defendant is armed with a deadly weapon;

....

(b) A confinement, detention or moving of the victim is deemed to be against the will of the victim if:

....

(3) Assent to the confinement, detention or moving is induced by force, threat or deception;

....

(c) Aggravated kidnapping is punishable by imprisonment in the penitentiary for a determinate sentence of life or for a term not less than twenty (20) years.

(d) Aggravated kidnapping is a Class X felony.

....

T.C.A. § 39-2603 (Supp. 1981).

We note that both the armed robbery and aggravated kidnapping offenses were Class X felonies at the time of the Petitioner's offenses, and the Tennessee Code Annotated section regarding Class X felonies stated:

**39-5403. Nature of Class X felonies.** – All Class X felonies shall:

(1) Be determinate in nature;

(2) Not be subject to reduction for good, honor or incentive or other sentence credit of any sort;

(3) Terminate or expire only after service of the entire sentence, day for day, under the control and supervision of the state of Tennessee; and

(4) Not be included in any pre-trial diversion program either before or after any court hearing.

T.C.A. 39-5403 (Supp. 1981). Because the Petitioner was required to serve his effective sixty-year sentence "day for day" and because he admits that he was convicted on January 27, 1982 in his petition for writ of habeas corpus, we conclude that his sentence is not void by virtue of the expiration of his sentence. Based on the limited record before us that does not include the Petitioner's judgment sheets, it appears that the Petitioner's sentence will not expire until sometime around 2042 or beyond.

Here, the Petitioner's indictment read:

COUNT ONE

The Grand Jurors for the State of Tennessee . . . present: That:

JOSEPH RICKY WIGGINS

heretofore, and prior to the finding of this indictment, to-wit, on the \_\_\_\_ day of June, 1981, with force and arms, in the County aforesaid, unlawfully and feloniously did make an assault upon the body of one JAMES FOXALL, and him the said JAMES FOXALL, then and there unlawfully and feloniously put in fear and danger of his life, and then and there unlawfully, feloniously, and violently did steal, take, and carry away from the person and against the will of the said JAMES FOXALL certain personal property, to-wit: quantity of drugs and good and lawful currency . . . of the value of approximately One Thousand (\$1,000) DOLLARS the property of the Foxall Pharmacy, a business establishment which sells controlled substances classified in schedules I - VI pursuant to T.C.A., Title 52, Chapter 14, which property was in the care, custody and control of the said JAMES FOXALL, and a wallet containing personal papers and a quantity of good and lawful currency of the United States, . . . of the value of approximately One Hundred Fifty (\$150.00) Dollars, the property of the said JAMES FOXALL, said robbery being accomplished by the use of a deadly weapon, to-wit: a handgun contrary to the form of the statutes in such cases made and provided, and against the peace and dignity of the State of Tennessee.

COUNT TWO

The Grand Jurors for the State of Tennessee . . . present: That:

JOSEPH RICKY WIGGINS

heretofore, and prior to the finding of this indictment, to-wit, on the \_\_\_\_ day of June, 1981, with force and arms, in the County aforesaid, unlawfully and feloniously did make an assault upon the body of one R. G. Nairon, and him the said R. G. Nairon, then and there unlawfully and feloniously put in fear and danger of his life, and then and there unlawfully, feloniously, and violently did steal, take, and carry away from the person and against the will of the said R. G. Nairon certain personal property, to-wit: a wallet containing personal papers and a quantity of good and lawful currency . . . of the value of approximately One Hundred (\$100.00) DOLLARS the property of the said R. G. Nairon, said robbery being accomplished by the use of a deadly weapon, to-wit: a pistol contrary to the form of the statu[t]es

in such cases made and provided, and against the peace and dignity of the State of Tennessee.

### COUNT THREE

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present that the said

#### JOSEPH RICKY WIGGINS

of said County heretofore, to-wit, on the day and year aforesaid, in the County aforesaid, unlawfully, feloniously, forcibly and against the will of one JAMES FOXALL did abduct the said JAMES FOXALL, the said abduction being accomplished by the use of a deadly weapon, to wit: a pistol in violation of the statutes made and provided and against the peace and dignity of the State of Tennessee.

### COUNT FOUR

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present that the said

#### JOSEPH RICKY WIGGINS

of said County heretofore, to-wit, on the day and year aforesaid, in the County aforesaid, unlawfully, feloniously, forcibly and against the will of one R. G. Nairon, did abduct the said R. G. Nairon, the said abduction being accomplished by the use of a deadly weapon, to wit: a pistol; and during said abduction the said JOSEPH RICKY WIGGINS did commit a felony on the person of the said R. G. Nairon, to wit: robbery accomplished by the use of a deadly weapon, in violation of the statutes made and provided and against the peace and dignity of the State of Tennessee.

Moreover, the cover sheet of the Petitioner's indictment clearly shows that Count 1 and Count 2 were armed robbery charges and Count 3 and Count 4 were aggravated kidnapping charges. This court has held that the cover sheet of an indictment is "incorporat[ed] by reference." State v. Nixon, 977 S.W.2d 119, 121 (Tenn. Crim. App. 1997), perm. to appeal denied (Tenn. July 6, 1998) (citing People v. Jeffrey, 418 N.E.2d 880, 887 (Ill. App. 1981); State v. Nelson, 514 S.W.2d 581, 584 (Mo. 1974); State v. Hurley, 251 S.W.2d 617, 619 (Mo. 1952); State v. Johnson, 335 S.E.2d 770, 771 (N.C. 1985); Hill v. State, 523 P.2d 1114, 1116 (Okla. Crim. App. 1974)); see also Danny R. King,

1998 WL 712345, at \*4. Because these charges were specified on the cover sheet of the indictment, we conclude that the Petitioner was sufficiently put on notice regarding the specific charges he would have to defend. Id. Furthermore, the Petitioner had the benefit of trial counsel, who was obligated to inform him of the elements, Class, and punishment for each of his charged offenses. Although the Petitioner later filed a petition for post-conviction relief claiming that trial counsel provided ineffective assistance, the post-conviction court dismissed this claim, and this court affirmed the post-conviction court's dismissal on November 15, 1985.

A review of the indictment in this case shows that it closely followed the language contained in the aggravated kidnapping and armed robbery statutes, included the elements for each offense, provided the date, place, and description of the offense, and identified the Petitioner and the victims of the offenses. "The fundamental test of the sufficiency of an indictment is the adequacy of the notice to the defendant conveyed by its terms." Green v. State, 143 S.W.2d 713, 715 (Tenn. 1940). We conclude that the indictment was not defective and did not violate the Petitioner's due process rights. Although the indictment did not list the specific code sections for the offenses, the indictment placed the Petitioner on notice as to the charges, placed jurisdiction of the case squarely with the trial court, and foreclosed double jeopardy problems. See Hill, 954 S.W.2d at 727; see also Robert Howell v. Tony Parker, Warden, No. W2005-00521-CCA- R3-HC, 2005 WL 1541825, at \*2 (Tenn. Crim. App., at Jackson, June 27, 2005), perm. to appeal denied (Tenn. Dec. 5, 2005). Accordingly, the Petitioner is not entitled to habeas corpus relief on this issue.

### CONCLUSION

\_\_\_\_\_ The habeas corpus court's dismissal of the petition for a writ of habeas corpus is affirmed.

JUDGE

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CAMILLE R. McMULLEN,